



State of North Carolina
Department of Environmental Quality
Division of Water Resources

15A NCAC 02B .0233 (8)(b), .0243 (8)(b), .0250 (11)(b), .0259 (8)(b), .0267 (11)(c), .0607 (e)(2)
Protection and Maintenance of Riparian Areas Rules - Variance Application
FORM: VAR 08-2018

Instructions for Online Variance Application

The Variance Application (VAR 08-2018) form is required for applicants seeking approval for activities within North Carolina's protected riparian buffers that are listed as prohibited or are not listed in the Table of Uses of the Buffer Rule applicable to the property (see citations below). If you are requesting activities listed in the Table of Uses as "Allowable or Allowable with Mitigation", please use the Buffer Authorization (BA 08-2018) form to apply for those impacts.

- [Buffer Authorization Form BA 08-2018](#) (downloadable Word document)
- [Online Buffer Authorization Form BA 08-2018](#)
- [Buffer Variance Application form VAR 08-2018](#) (downloadable Word document)
- [Online Buffer Variance Application form VAR 08-2018](#)

HOW DO I KNOW IF I NEED A VARIANCE?

The riparian buffer must be undisturbed, regardless of property size or type of land use. Within each set of buffer [rules](#)¹, there is a Table of Uses for specific activities:

- **Exempt** uses are allowed in the riparian buffer without approval from DWR.
- **(Potentially) Allowable or Allowable with Mitigation** uses may occur in the buffer once a Buffer Authorization is issued from DWR. Some of these impacts may require mitigation.
- **Prohibited** uses are not allowed in the buffer unless a variance is granted from DWR or the N.C. Environmental Management Commission. Activities not listed in the Table of Uses are **prohibited**.

¹ Rules:

Neuse	15A NCAC 02B .0233 (8)(b)	Catawba	15A NCAC 02B .0243 (8)(b)
Randleman	15A NCAC 02B .0250 (11)(b)	Tar-Pamlico	15A NCAC 02B .0259 (8)(b)
Jordan	15A NCAC 02B .0267 (11)(c)	Goose Creek	15A NCAC 02B .0607 (e)(2)

For projects within the Neuse and Tar-Pamlico River Basins and the Randleman Lake and Jordan Lake Watersheds, a minor Variance is required for prohibited activities that will impact only Zone 2 of the riparian buffer. A major Variance is required for prohibited activities that will impact any portion of Zone 1 or any portion of both Zones 1 and 2 of the riparian buffer.



For projects within the Catawba River Basin, a minor Variance is required for prohibited activities that impact any portion of Zone 1 and/or Zone 2 of the riparian buffer. For projects within the Goose Creek Watershed, a major Variance is required for prohibited activities that impact any portion of the riparian buffer.

Minor variance requests are reviewed and processed by the Division. Major variance requests are reviewed by the Water Quality Committee (WQC) of the Environmental Management Commission (EMC).

The Division will review your application for initial completeness within 45 days of receipt and notify you if additional information is needed to process your request. Minor variance requests are processed within 60 days of receipt of a complete application. Major Variance requests may take up to 6 to 9 months to process. To request that your proposed major variance be presented at the next scheduled WQC meeting, you must submit a complete major variance application at least sixty (60) days prior to the WQC meeting date. WQC meeting dates, are posted [here](#). Please note that we cannot guarantee the proposed major variance will be presented at the next WQC meeting. You may not begin work until you have received your variance approval letter and/or additional conditions and any required mitigation has been approved.

FEES

There is no application fee for Variance requests.

APPLICATION FORM INSTRUCTIONS

Below you will find detailed instructions on how to fill out each section of the VAR 08-2018 form.

General Project Information:

These fields will help us identify your project and direct it to the correct project manager for timely review.

Is this a publicly-funded transportation project?

Is this an NCDOT Project?

If so, check yes and enter the TIP number and WBS number assigned to the project.

Type of variance:

Select major or minor according to your project.

Please identify which Riparian Area Protection Rule applies:

Choose the basin/ watershed appropriate for your corresponding project. The 401 & Buffer Permitting statutes and rules may be found [here](#).

Applicant Information:

Although the agencies will communicate with the individual(s) listed as the applicant on the VAR 08-2018 form, the owner receives the original of all communications. The variance must be issued to the legal owner of the property.

Property Owner

Provide the name of the corporation, individual, etc. who owns the property. A responsible individual must be identified for the proposed project, even if it is a corporate effort. Provide the property owner's mailing address, telephone number, and email address.

Who is submitting the application? Check all that apply

Applicant Information (if different from owner):

Provide the applicant's name, company affiliation, mailing address, telephone number, and email address of the individual, corporation, etc. who is requesting the variance. If the applicant is not the

owner of the property, you must include an agent authorization letter with your VAR 08-2018 form for it to be considered complete.

Upload a signed and dated copy of the authorization granting the applicant owner approval. An Agent Authorization form is acceptable.

A sample agent authorization form may be found here:

http://www.saw.usace.army.mil/Portals/59/docs/regulatory/regdocs/Permits/SAMPLE_AGENT_AUTHORIZATION_FORM.pdf

Agent Information

Provide the agent/consultant's name, company name, mailing address, telephone number and email address. If you list an agent or consultant, you must include an agent authorization letter with your VAR 08-2018 form for it to be considered complete.

Upload an agent authorization form.

A signed and dated copy of an agent authorization letter must be uploaded if the agent has signatory authority for the owner/applicant. (See the [sample form](#) on the web and upload the completed PDF.)

Project Information

Project Name

If your project has a formal name (subdivision, facility, or establishment name), please use this. If your project does not have a formal name, please identify your project by the owner name and proposed activity (Jones Property Access Road, Smith Guest House, etc.) List in parentheses any other names that have been used to identify the project in the past.

County/ Counties

Choose from the list the county in which the project is located. Multiple counties may be entered.

Property Location

Property Address:

Provide the street address of the proposed project.

Latitude/ Longitude:

The site coordinates are necessary so the agencies can accurately locate and analyze impacts from your proposed project. Site coordinates can be obtained from maps (see options listed below), surveys, or from GPS devices. Coordinates should be written as latitude and longitude and expressed in decimal degrees carried out to 4 decimal places. For assistance in finding the latitude/longitude information for your project, [GetLatLong](#) may be helpful.

Upload an 8 ½ x 11 excerpt from the most recent version of the USGS topographic map indicating the location of the site (.pdf only):

USGS maps may be found via the [USGS Store](#). Click the "Map Locator" button to jump to the map, type the address into the search bar or navigate to the location on the map, double-click to select the location, click "view products" in the pop-up box, choose the most recent 1:24,000 map version and click "view PDF" to download an interactive topographic map.

You may also consult other resources. The latitude and longitude of your site may also be found on the [NC One Map](#) and [USGS National Map](#).

Upload an 8½ x 11 excerpt from the most recent version of the published County NRCS Soil Survey maps depicting the project site (.pdf only):

[Soil Surveys for North Carolina Counties](#) may be found on the Natural Resources Conservation Service (NRCS) website. To select the **most recent published** map, find the proper county, select the most recent date that *also* is denoted as “yes” in the “Archived PDF online” column.

You may also use the “Most recent published Soil Survey Table” under “Maps” from the [Riparian Buffer Protection Program page](#) to determine the **most recent published** version.

You may also contact your local NRCS office for a paper version of your County’s Soil Survey. Contact information for local offices may be found by county. Click on NC then the appropriate county at: <https://offices.sc.egov.usda.gov/locator/app>. The “Web Soil Survey” may not be used for the purpose of the riparian buffer rules.

Property Information

Parcel identification no. (Tax PIN or parcel ID):

List the identifying tax ID, parcel ID or PIN (whichever is the primary identifying information for real estate tax purposes in the county in which your property is located) and pertinent information. (Multiple identification numbers may be entered.)

This information can frequently be found online through your county tax records or on a real estate tax invoice for the property, or from the local County tax assessor’s office or register of deeds. Some counties have interactive GIS maps that show the property identification numbers as well:

[NC State Property Office](#) to find tax parcel ID for your county
Available [NC County GIS Data](#) (list managed by NCSU)

Date of Purchase:

This information can be found from your county tax records or on a real estate tax invoice for the property, or from the local County tax assessor’s office or register of deeds.

Deed Information:

Enter deed book and page number and map book and page number for the property(-ies).

Attach a copy of the recorded map that indicates when the lot was last platted

Is your project in one of the 20 Coastal Counties covered under the Coastal Area Management Act (CAMA)?

A list of the [20 Coastal Counties](#) can be found on the Division of Coastal Management page.

Is the project located within a NC Division of Coastal Management (DCM) Area of Environmental Concern (AEC)?

A list of the [20 Coastal Counties](#) can be found on the Division of Coastal Management page.

In which Area of Concern (AEC) do you fall (30 ft or 75 ft)?

To learn more about AECs and CAMA permits, visit the [NC Division of Coastal Management](#)’s web site. You may also contact the [NC DCM representative](#) for your project area.

What is the total percent of impervious cover that you have proposed within the AEC?

To determine the percent of impervious cover, total the square footage of impervious cover (e.g. buildings, sidewalks, patios and decks) proposed within the AEC and divide it by square footage of AEC on the property.

Directions to site from nearest major intersection:

Self-explanatory (enter text).

Stream associated with riparian buffer to be impacted by the proposed activity:

Enter Stream name and classification in the table. Additional rows may be entered.

Surface Water Classifications are designations applied to surface water bodies, such as streams, rivers and lakes, which define the best uses to be protected within these waters (for example swimming, fishing, drinking water supply) and carry with them an associated set of water quality standards to protect those uses. Surface water classifications are one tool that state and federal agencies use to manage and protect all streams, rivers, lakes, and other surface waters in North Carolina.

[NC Surface Water Classifications Map](#)- navigate to your location on the map for surface water information based on location

[Water classifications in North Carolina](#) and look-up tools for waters in each major river basin

[Water Resources data, statistics, and maps](#)

List any permits/approvals that have been requested or obtained for this project in the past (including all prior phases):

Enter date applied, date received, and permit type in the table. Additional rows may be entered.

Examples include CAMA Major, CAMA Minor, 401 Certification, 404 Permit, stream determination, on-site wastewater permit, NPDES permit (including stormwater), non-discharge permit, water supply watershed variance, erosion/sedimentation control, etc.

Proposed Activity**Provide a detailed description of proposed activity including its purpose:**

Fully describe the project and what is planned to occur. This information is critically important because the purpose dictates how alternatives to your proposed work are considered. Provide a clear, concise description of the primary goals of the proposed project; for example if you are building an addition to a house, write "building an addition onto existing house to accommodate an expanding family". Explain any site specific constraints that may exist on the property that will affect how your project is built. Also list any special or unique equipment here that may be used on the project.

Upload a site plan as applicable to the project (.pdf only):

See the posted [instructions](#) on what you will need to show on your site plan.

Proposed Impacts and Mitigation Information**Individually list the square footage of each proposed impact to the protected riparian buffers:**

Click to add additional lines/ sites as needed.

Site # - Reason

Each site should be individually listed and numbered/ named. The impact site numbers should be labeled and correspond with those on your impact maps. The reason for the impact should correspond with the categories in the [Table of Uses](#). (Uses are found within each individual corresponding buffer rule.) Use examples may include house, driveway, walkway, access road, etc. An example map label entry might be "Road Crossing 1" to depict the reason for impact and site designation.

Buffer Impacts: Permanent or Temporary

Check the corresponding box (P) permanent or (T) temporary for each buffer impact. Temporary impacts include temporary roads, temporary sediment and erosion control devised and those areas that would be cleared for construction of the project, provided they would be allowed to revegetate once construction of the project is complete.

Stream name

Enter the name of the stream adjacent to the buffer (i.e., the stream labeled on the USGS topographic map). If the stream has no name, then call it an unnamed tributary (UT) to the nearest named stream. If there are multiple unnamed tributaries to the same named stream on the site, then list them numerically (such as UT-1 to Swift Creek, UT-2 to Swift Creek, UT-1 to Davis Creek, etc.).

[NC Surface Water Classifications Map](#) (for surface water information based on location):

Mitigation required?

Mitigation is not required for temporary impacts. Buffer mitigation is required for all permanent impacts to Zone 1 and 2 of the riparian buffer. If you are unsure if mitigation is required, please call the NC DWR 401/Buffer Coordinator at (919) 807-6364.

In the Neuse, Catawba, and Tar-Pamlico River Basins and the Randleman Lake and Jordan Lake Watersheds, the 50-foot riparian buffer has two zones:

Zone 1:

- (i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the surface water.
- (ii) For ponds, lakes and reservoirs located within a natural drainage way, Zone 1 shall begin at the most landward limit of the normal water level or the rooted herbaceous vegetation and extend landward a distance of 30 feet.
- (iii) For surface waters within the 20 Coastal Counties (defined in 15A NCAC 02B .0202) within the jurisdiction of the Division of Coastal Management (DCM), Zone 1 shall begin at the most landward limit of the following and extend landward a distance of 30 feet:
 - a. the normal high water level;
 - b. the normal water level; or
 - c. the landward limit of coastal wetlands as defined by DCM;

Zone 2:

Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.

In the Goose Creek Watershed, the riparian buffer is 200 feet within the 100-year Floodplain and 100 feet outside of the 100-year Floodplain. There are no Zones within the Goose Creek rules.

Total Impacts: Zone 1, Zone 2, Buffer

Total proposed impacts to buffers, Zone 1, and Zone 2 are auto-calculated. Total impact should correspond with the square footage on your impact map that requires mitigation. Note this number may be less than the total proposed impacts if not all of your proposed impacts require mitigation.

Comments:

Explain any items that may need clarification or that do not fit perfectly into the table.

Mitigation Information Table

Items listed in the [Table of Uses](#) as “(Potentially) Allowable with Mitigation” require mitigation. The table identifies the total square footage of impact to each zone that requires mitigation and calculates the total amount of mitigation required according to the information entered for the project in the Proposed Impacts section above.

1a. What is the mitigation plan proposed for this project?

Mitigation options include permittee responsible mitigation (restoration or enhancement of a non-forested riparian buffer), purchasing riparian buffer mitigation credits from a private mitigation bank, or purchasing riparian buffer mitigation credits from the Division of Mitigation Services (DMS) if mitigation is not available from a private mitigation bank. Select the option(s) that apply to your project.

A list of [available mitigation banks](#) can be found on the DWR Nutrient Offset and Buffer Mitigation Program page.

[Session Law 2009-337](#) stipulates payment of a fee into the NC DMS is only available to an applicant who demonstrates that appropriate mitigation is not available from a compensatory mitigation bank.

1b. Provide a description of your permittee responsible mitigation plan.

If on-site riparian buffer restoration is proposed, a detailed restoration plan must be included in the application package following the current DWR mitigation rules [15A NCAC 02B .0295](#).

Attach all appropriate information as identified within 15A NCAC 02B .0242, .0244, .0260, .0244, .0252, .0609, or .0268.

1c. Upload a detailed planting plan for permittee responsible mitigation to include plant type, date of plantings, the date of the one-time fertilization in the protected riparian buffers, and a plan sheet showing the proposed location of the plantings.

See [15A NCAC 02B .0295](#).

1d. Upload the statement of availability from the mitigation provider if purchasing mitigation credits from a mitigation bank.

If mitigation is proposed through a private mitigation bank, statement of availability must be included in the application package specifying that they have the appropriate number of credits that your project requires. DWR recommends that you request the maximum possible mitigation amount that may be required so that you will not have to get further approval on short notice.

1e. Upload the reservation letter from NC DMS if purchasing mitigation credits from an in-lieu fee program.

If mitigation is proposed through NC DMS, an acceptance letter must be included in the application package specifying that they have the appropriate number of credits that your project requires. DWR recommends that you request the maximum possible mitigation amount that may be required so that you will not have to get further approval on short notice.

1f. Comments:

Explain any items that may need clarification

Stormwater

Provide a description of how diffuse flow will be maintained through the protected riparian buffers (e.g., re-planting vegetation or enhancement of existing vegetation, gutter splash pads, level spreader to control of runoff from impervious surfaces, etc.).

All buffer impacts and high ground impacts require diffuse flow to be maintained through the buffer. Concentrated stormwater flow must be converted to diffuse flow as noted in the [Buffer Clarification Memo: "Options for meeting diffuse flow provisions in the stormwater and riparian buffer programs"](#). Level spreaders and other stormwater control measures (SCMs) must be designed and the appropriate documentation provided ([supplement form and O & M agreements](#)) as outlined in the [Stormwater Rules 15A NCAC 02H .1050-1062](#).

See the following websites for detailed information:

DWR Listing of [Buffer Clarification Memos](#)
[Option for meeting diffuse flow](#) document
[Stormwater Design Manual](#) (including supplement forms)
DEMLR [Stormwater Rules and Regulations](#)

Show the location of diffuse flow measure(s) on your site plan:

See the links above for assistance in developing your site plan, and upload the plan.

Upload completed forms with all required items for each proposed diffuse flow measure.

See the specific chapter for each type of measure in the [NC Stormwater Design Manual](#) for detailed information on how to design and use measures.

Diffuse Flow Documentation

Complete and upload applicable forms for each SCM proposed:

- [Level spreader & bmp forms](#)
- [SWU-101 form](#)
- [Supplement EZ form](#)
- [O&M EZ form](#)

(Additional) Forms may also be found at:

- <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-rules/stormwater-program/post-construction>
- <https://deq.nc.gov/about/divisions/water-resources/water-resources-permit-guidance/stormwater-bmp-manual>

Demonstration of Need for a Variance

Explain how complying with the provisions of the applicable rule would prevent you from securing a reasonable return from or make reasonable use of your property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. The Division will consider whether the variance is the minimum possible deviation from the terms of the applicable Buffer Rule that shall make reasonable use of the property possible.

In considering whether the variance is the minimum possible deviation from the terms of the applicable Buffer Rule that shall make reasonable use of the property possible, the Division will review the application to determine if impacts to protected riparian buffers have been avoided and minimized.

Minimizing and avoiding impacts should be a critical part of the design process. The following is a checklist of avoidance and minimization questions that the Division often looks for in applications. If the answer to any of the below questions is “**yes**” then you must provide a specific justification addressing these issues as to why the impacts are necessary.

- Can property access routes be moved or reduced to avoid or reduce stream, wetland, water, and buffer impacts?
- Can a building, parking lot, etc. be realigned to avoid or reduce impacts?
- Can the site layout be reconfigured to avoid or reduce impacts?
- Can headwalls or steeper side slopes be safely used to avoid or reduce impacts?
- Can a retaining wall be safely used to avoid or reduce impacts?

List all techniques and practices that you plan to use to avoid and minimize (i.e. reduce) impacts from the construction of the project (e.g., scheduling issues to avoid certain time-specific and aquatic impacts, erosion control measures, hand clearing versus use of heavy equipment, site access from high ground,

pre-fabrication of materials in high ground to minimize time in sensitive environments, building elevated structures over wetlands or streams to transport equipment, etc.).

Explain how the hardship results from application of the Buffer Rule to the property rather from other factors such as deed restrictions or other hardships (e.g. zoning setbacks, floodplains, etc).

If adherence to zoning setbacks prevents reconfiguration of your project to avoid or minimize impacts to the protected riparian buffer then applicants should request a variance from local municipalities prior to requesting a variance from the applicable Buffer Rule.

Explain whether the hardship was caused by the applicant knowingly or unknowingly violating the applicable Buffer Rule.

Conducting an activity within the protected riparian buffer that is not listed as Exempt in the Table of Uses of the applicable Buffer Rules without a Buffer Authorization or Variance would constitute a violation.

Explain how the hardship results from physical nature of the property, such as its size, shape, or topography, which is different from that of neighboring property.

Self-explanatory

Explain how the hardship is rare or unique to the applicant's property, rather than the result of conditions that are widespread.

Self-explanatory

For Neuse, Tar-Pamlico, Jordan Lake and Goose Creek only: Did the applicant purchase the property after the effective date of the applicable Buffer Rule and then request a variance?

The effective date for each Buffer Rule is listed below.

Neuse - July 22, 1997

Tar-Pamlico - January 1, 2000

Catawba - June 30, 2001

Jordan - August 11, 2009*

Randleman - April 1, 1999

Goose Creek - February 1, 2009

**Or date local program was adopted*

Sign and Submit

Deed Restrictions:

By electronic signature, the applicant certifies:

All structural SCMs shall be located in recorded drainage easements for the purposes of operation and maintenance. The easements will run with the land and cannot be changed or delete without concurrence from the State of NC. The Easements will be recorded prior to the sale of any lot.

Applicant's Certification

The application must be signed and dated by the person(s) who is/are legally responsible for the property and its compliance. If an agent is filling out the application, the agent should not sign the application unless they are certifying that they will be the responsible party for the property's compliance.